



DECISION ON ADMISSIBILITY AND TO STRIKE OUT

Case no. CH/02/10479

Milka UZELAC

against

**THE FEDERATION OF BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 December 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement (“the Agreement”) set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Article VIII(2)(c) and Article VIII(3)(c) of the Agreement and Rule 52 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The case concerns the applicant's attempts to regain possession of her pre-war apartment located at ul. Jošanička no. 161 in Vogošća, the Federation of Bosnia and Herzegovina.
2. On 19 June 2000, the Administration for Housing Affairs of Sarajevo Canton (the "Administration") accepted the applicant's request for repossession of the apartment. The applicant submitted a request on 22 August 2000 for enforcement of the procedural decision, but she received no response. The temporary occupant appealed against the procedural decision to the Ministry of Housing Affairs of Sarajevo Canton (the "Ministry"). On 19 June 2000, the Ministry annulled the procedural decision and referred the case back to the Administration for reconsideration.
3. On 7 February 2002, the Administration issued a new procedural decision. On 10 April 2002, the applicant appealed against that procedural decision complaining that the Administration established an illegal deadline for the temporary occupant to vacate the apartment. None the less, on 10 May 2002, the applicant submitted a request for enforcement of the procedural decisions of 19 June 2000 and 7 February 2002. As of the date she submitted her application to the Chamber, she had received no response to her appeal or requests for enforcement.
4. On 16 October 2001, the Commission for Real Property Claims of Displaced Persons and Refugees (the "CRPC") issued a decision recognising the applicant as the occupancy right holder of the apartment in question. On 11 January 2002, the applicant requested the Administration to enforce the CRPC decision. As of the date of her application, she had received no response to this request.
5. On 01 November 2002 the applicant entered into possession of her apartment.

II. PROCEEDINGS BEFORE THE CHAMBER

6. The application was introduced on 10 May 2002 and registered on the same date.
7. In her application, the applicant complained that the authorities of the Federation of Bosnia and Herzegovina failed to decide upon her requests for reinstatement within the legally prescribed time limits. The applicant alleged that her rights under Articles 6 and 8 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention had been violated. In addition the applicant alleged that the provisions regarding enforcement of CRPC decisions had been violated.
8. On 7 November 2002, the applicant submitted a letter and documents informing the Chamber that she had entered into possession of her apartment on 01 November 2002. However, she noted that she would like to maintain her claim for compensation as she, instead of the respondent Party, provided six months of alternative accommodation to the temporary occupant. In addition, she stated that she would like compensation for expenses she incurred for her alternative accommodation as a refugee in the Republic of Croatia and for legal expenses during the reinstatement proceedings.

III. OPINION OF THE CHAMBER

A. As against the Republika Srpska

9. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

10. With regard to the two respondent Parties, the Chamber notes that the Administration for Housing Affairs of Sarajevo Canton and the Ministry of Housing Affairs of Sarajevo Canton, the organs responsible for conducting the proceedings complained of by the applicant, engage the responsibility of the Federation, not of the Republika Srpska for the purposes of Article II(2) of the Agreement. Accordingly, as directed against the Republika Srpska, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare the application inadmissible as against the Republika Srpska.

B. As against the Federation of Bosnia and Herzegovina

11. In accordance with Article VIII(3) of the Agreement, “the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that ... (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such a result is consistent with the objective of respect for human rights.”

12. The Chamber notes that the applicant lodged her application with a view to regaining possession of her apartment, and while the case was still pending before the Chamber, she regained such possession. The Chamber further notes that although the applicant has been reinstated, she understandably asks the Chamber to find a violation of her rights protected by the Agreement due to the time that elapsed between her request for reinstatement into possession of her pre-war apartment and the actual repossession. She also asks the Chamber to order the respondent Party to pay compensation to her in recognition of the pecuniary damage suffered by her during the course of that time.

13. The Chamber recalls that under Article VIII(2)(e) of the Agreement, “the Chamber shall endeavour to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds”. As the Chamber has explained in the case of *Vujičić v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2198, decision to strike out of 10 October 2002, Decisions July–December 2002), there are presently thousands of undecided applications pending before the Chamber, and this number is growing month by month. Moreover, significant progress in the return and property law implementation process in Bosnia and Herzegovina has occurred (*id.* at paragraphs 15-16).

14. Taking into account that the applicant has been reinstated into possession of her apartment, the Chamber considers that the ongoing alleged human rights violation has been brought to an end and the main issue of the application has been resolved. The Chamber recognises that valid reasons may underlie the applicant’s request to nonetheless maintain her claim for compensation. However, in the light of the considerations discussed above, the Chamber finds that “it is no longer justified to continue the examination of the application” within the meaning of Article VIII(3)(c) of the Agreement. The Chamber moreover finds that this result is “consistent with the objective of respect for human rights”, as this “objective” must be understood to embrace not only the individual applicant’s human rights, but also the Chamber’s more general mandate to assist the Parties in securing to all persons within their jurisdiction the highest level of internationally recognised human rights (Articles I and II of the Agreement).

15. The Chamber, therefore, decides to strike out the remainder of the application, pursuant to Article VIII(3)(c) of the Agreement.

IV. CONCLUSION

16. For these reasons, the Chamber, unanimously,

DECLARES THE APPLICATION INADMISSIBLE AS AGAINST THE REPUBLIKA SRPSKA AND STRIKES OUT THE REMAINDER OF THE APPLICATION.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel